

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROBERT REIFSCHNEIDER,

Plaintiff,

v.

Case No. 18-C-146

DR. THOMAS GROSSMAN et al.,

Defendants.

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**ORDER VACATING DISMISSAL OF DR. GROSSMAN AND REIMPOSING STAY**

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On January 29, 2018, Plaintiff Robert Reifschneider, who is incarcerated at Wisconsin Secure Program Facility and representing himself, filed a complaint alleging federal and state law claims against Dr. Thomas Grossman and several Department of Corrections (DOC) employees. ECF No. 1. The court screened the complaint and allowed Reifschneider to proceed on federal and state law claims against the DOC nurse defendants and on state law medical malpractice claims against Drs. Grossman, Hoffman, and Syed. ECF No. 9. On September 24, 2018, the court granted Dr. Grossman's motion to compel Reifschneider to comply with the mediation requirements of Chapter 655 of the Wisconsin Statutes and stayed the case. ECF No. 40. The court directed Reifschneider to file a mediation request under Ch. 655, Wis. Stat. with respect to his claim against Dr. Grossman by October 9, 2018 and to promptly notify the court of the filing. *Id.* On October 24, 2018, having not received notice that the mediation request was filed, the court dismissed Reifschneider's malpractice claim against Dr. Grossman, terminated Dr. Grossman as a defendant in this action, and lifted the stay on the case. ECF No. 52. Presently before the court is Reifschneider's motion to, in effect, vacate that order.

After review of Reifschneider's motion and the attached declaration, the court will grant his motion, vacate the dismissal of Dr. Grossman as a defendant in this action, and stay the case until the expiration of the mediation period under Wisconsin Statute § 655.465. Reifschneider asserts that, on September 27, 2018, he sent his completed mediation request to Wisconsin Secure Program Facility's business office to get approval for copying because he is using a legal loan. Reifschneider then sent the mediation request to his uncle, James Moritz, so that his uncle could pay the required \$11 filing fee and mail the request to the Director of State Courts. Reifschneider asserts that his uncle mailed the mediation request on or about October 9, 2018. Whether the mediation request was timely filed is unclear. Dr. Grossman's counsel maintains that the request was untimely filed because he received a notice of the filing of the mediation request dated October 15, 2018. ECF No. 53. That the notice of the filing of the request was dated October 15, 2018 does not necessarily mean that the request was mailed to or received by the Director of State Courts after October 9, 2018. In any event, given Reifschneider's prisoner status, the court is required to liberally construe his filings and take into consideration the limitations prison imposes. No prejudice has been shown from the allegedly late filing, and vacating the order dismissing Dr. Grossman will allow a determination on the merits as opposed to a procedural default. The court will therefore vacate its previous order dismissing Dr. Grossman and continue the stay until the statutory mediation period expires.

**IT IS THEREFORE ORDERED** that the court's October 24, 2018 order dismissing Reifschneider's malpractice claim against Dr. Grossman and terminating Dr. Grossman as a defendant (ECF No. 52) is **VACATED**.

**IT IS FURTHER ORDERED** that Reifschneider's motion to add Dr. Grossman as a defendant (ECF No. 54) is **GRANTED**.

**IT IS FURTHER ORDERED** that this action is **STAYED** until the expiration of the mediation period under Wisconsin Statute § 655.465(7). Using October 9, 2018 as the date the mediation request was mailed to the Director of State Courts, the mediation period is set to expire on January 10, 2019.

Dated this   1st   day of November, 2018.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court